

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Dublin Division

IN RE:)	Chapter 13 Case
)	Number <u>00-30360</u>
DONNA HUGHES)	
SONNY HUGHES)	
)	
Debtors)	FILED
)	2002 JAN 11 P 4:52
LOAN SERVICING ENTERPRISES)	
SERVICING AGENT FOR CYGNET)	
FINANCIAL SERVICES, INC. AND)	
SERVICING AGENT FOR AMN)	
RECEIVABLES CORP.)	
)	
Movant)	
)	
vs.)	
)	
DONNA HUGHES)	
SONNY HUGHES, Debtors)	
AND BARNEE C. BAXTER,)	
CHAPTER 13 TRUSTEE)	
)	
Respondents)	

ORDER

Hearing was held on the motion of Loan Servicing Enterprises, servicing agent for Cygnet Financial Services, Inc. and servicing agent for AMN Receivables Corp. seeking the allowance of a late claim or in the alternative stay relief. The motion is denied. This is the second such motion by Loan Servicing Enterprises. The prior motion was also denied. The facts necessary

to resolve this second motion are as follows.

Sonny and Donna Hughes filed this Chapter 13 case on July 10, 2000. The debtors' Schedule D listed Cygnet, P. O. Box 460340, Aurora, Colorado 80046 as a creditor secured by the debtors' 1994 Toyota truck. The debtors' plan relative to Cygnet and the Toyota truck provided as follows:

2(c) Debtor moves that the following creditors be treated as undersecured creditors and their claims shall be treated as secured only to the extent of the value of their interest in collateral as set forth below. The balance of each undersecured creditor's claim shall be treated as an unsecured claim and paid under paragraph 2(d) of this plan.

Creditor	Collateral	Amount of Secured claim
Cygnet	1994 Toyota	\$5,898.00

Cygnet failed to file a claim and pursuant to Federal Rule of Bankruptcy Procedure 3004¹ the debtors filed a proof of secured claim on behalf of Cygnet in the amount of \$5,898.00 to be paid pursuant to Local Bankruptcy Rule LBR 3001-2². The debtor filed claim on

¹Federal Rule of Bankruptcy Procedure 3004 provides in relevant part:

If a creditor fails to file a proof of claim on or before the first date set for the meeting of creditors called pursuant to §341(a) of the Code, the debtor or trustee may do so in the name of the creditor, within 30 days after expiration of the time for filing prescribed by Rule 3002(c) The clerk shall forthwith mail notice of the filing to the creditor, the debtor and the trustee. . . .

²LBR 3001-2 provides:

behalf of Cygnet was allowed, the debtors' plan was confirmed and the Chapter 13 Trustee made distributions on the allowed claim to Cygnet.

On March 30, 2001 Loan Servicing Enterprise filed its first motion to allow late claim or in the alternative for stay relief in this case. In the motion, Loan Servicing Enterprise claimed status as "Loan Servicing Enterprise, servicing agent for AMN Receivables, the "movant", a creditor of the referenced debtors" claiming a secured interest in the debtors' 1994 Toyota truck with a principal balance due of \$7,944.44. Loan Servicing Enterprise sought allowance of a proof of claim in this amount or in the alternative, based upon a lack of adequate protection, stay relief. At hearing, the debtors oppose stay relief and oppose the

Interest on claims in Chapter 13 case. Without in any way limiting or amending any provision of the Code or Rules that govern the filing of proof of claim, all claims filed in this Court shall be filed for the net principal balance only as of the date of the debtor's filing of his or her case.

Unless otherwise ordered by the Bankruptcy Judge, the Chapter Trustee is directed to pay interest at a rate of 12% per annum on all allowed secured claims and is further directed to file objections to or notify debtor's counsel with respect to any claim which is not filed in accordance with the terms of this order.

The sanction provisions of Bankruptcy Rule 9011 apply to claims filed in violation of applicable provisions of the Bankruptcy Code and Rules.

allowance of a proof of claim on behalf of Loan Servicing Enterprise in excess of the amount of the previously allowed proof of claim on behalf of Cygnet of \$5,898.00. At hearing, counsel appearing on behalf of the movant represented to the court that Cygnet was never a lienholder on this automobile in this transaction relying upon the purchase contract and certificate of title reflecting the retention of an initial security interest by the car dealer Walker-Jones Chevrolet Buick Oldsmobile with subsequent assignment to AMN Receivables Finance Corp. However, the documentation failed to reflect any interest held by Loan Servicing Enterprise other than a statement in the motion contending that it is the servicing agent for AMN Receivables. At the first stay relief hearing the debtors disputed the standing of Loan Servicing Enterprise to bring the motion. The debtor testified that Cygnet was his creditor on the Toyota truck. In a motion for stay relief, the burden of proof rests with the party opposing relief on all issues other than debtors' equity. 11 U.S.C. §362(g).³ However, it is incumbent upon

³11 U.S.C. §362(g) provides:

In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section -

(1) the party requesting such relief has the burden of proof on the issue of debtor's equity in property; and

(2) the party opposing such relief has the burden of proof

the movant to make a prima facie showing of its entitlement for relief. Foremost, as it pertains to an entity claiming a lack of adequate protection, as in this case, of an interest in property held by the movant, that entity must show an interest in the property that is the subject of the motion. Loan Servicing Enterprise was unable to make that prima facie showing and therefore, its motion to allow a late claim or stay relief was denied. Based upon the representations made by counsel at hearing that Cygnet was not the proper party in interest the debtors attempted to withdraw their proof of claim filed on behalf of Cygnet.

In its current motion filed June 20, 2001 Loan Servicing Enterprise represents itself as "Servicing agent for Cygnet Financial Services, Inc. and servicing agent for AMN Receivables. . . ." (emphasis added). As exhibits to the current motion movant attaches two exhibits captioned "Special Power of Attorney." One exhibit provides as follows:

Know all men by these presents that Cygnet Financial Services, Inc., an Arizona Corporation ("Cygnet"), has made, constituted and appointed, and by these presents does make, constitute and appoint, CSC LOGIC/MSA d/b/a Loan Servicing Enterprise ("LSE") as attorney in fact for Cygnet, authorized in the name, place and stead of Cygnet, to create, prepare,

on all other issues.

complete, execute, deliver, endorse or file such documents and assignments as may be necessary to effect fully all right, title and interest of Cygnet, for the benefit of Auto Marketing Network, Inc. ("AMN") in and to any and all automobile loan receivables, including the interest in any vehicle securing said automobile loan receivables owned by AMN or owned by Cygnet for the benefit of AMN. The said attorney-in-fact shall have no other powers. [emphasis added.]

The other special power of attorney provides:

KNOW ALL MEN BY THESE PRESENTS, that each of Auto Marketing Network and AMN Receivables Corp., of the County of Los Angeles, State of California, has made constituted and appointed and by these presence does make, constitute and appoint CSC LOGIC/MSA d/b/a Loan Servicing Enterprise, as attorney-in-fact and in the name of Auto Marketing Network (AMN) and AMN Receivables Corp. in its place and stead, to have the power to endorse all checks and drafts and perform all acts necessary to perform its duties, including, but not limited to, duties associated with executing titles and title work to be completed for release of liens on paid in full accounts, repossessions and totalled vehicles under previously executed loan servicing agreement(s) dated as of November 1, 1999. The said attorney-in-fact shall have no other powers not given in said loan servicing agreements. [emphasis added.]

As to the second referenced special power of attorney the loan servicing agreements were not disclosed. The special power of attorneys relied upon by the movant here and identified under the special powers of attorneys as CSC LOGIC/MSA d/b/a Loan Servicing

Enterprise, whatever that entity may be, to act on behalf of Cygnet Financial Services, Inc., Auto Marketing Network and AMN Receivables Corp. list narrowly prescribed powers. No where in the special power of attorneys relied upon by the movant is it authorized to act on behalf of any of these named entities by filing proofs of claim on their behalf or collecting monies in its name on their behalf. Once again, movant has failed to make a prima facie showing that it, CSC LOGIC/MSA d/b/a Loan Servicing Enterprise is entitled to file a proof of claim in this case on behalf of either of its purported principals or that it is owed any money or holds any interest in any property owned by the debtors.

The motion to allow late claim or in the alternative for stay relief is ORDERED denied and the previously filed claim for Cygnet remains in effect to be paid by the Chapter 13 Trustee in accordance with the confirmed plan.⁴

JOHN S. DALIS

⁴If Cygnet is not the proper party in interest, the appropriate remedy is for the holder of the note and security interest in the debtors' truck directly or through an agent authorized to act on its behalf in the filing of a proof of claim and the collection of monies disbursed from the Chapter 13 Trustee to seek reconsideration of the allowed claim on behalf of Cygnet pursuant to 11 U.S.C. §502(j) and Federal Rule of Bankruptcy Procedure 3008 as to amount and proper party in interest and be prepared at hearing to prove, as movant it bears the burden of proof by a preponderance of the evidence, the debt and that the movant is the proper party in interest asserting the claim.

CHIEF UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia

this 11th Day of January, 2002.